

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FRANCISCO DACILLO ALIAS DODOY AND JOSELITO PACOT Y IBARRA (CASE PROVISIONALLY DISMISSED), ACCUSED, FRANCISCO DACILLO alias DODOY, APPELL...

G.R. No. 149368. April 14, 2004

Ponente: CORONA, J.

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CORONA, J.:

Before us on automatic review is the decision[1] of the Regional Trial Court of Davao City, Branch 31, in Criminal Case No. 45,283-2000 convicting appellant Francisco Dacillo y Timtim alias Dodoy of the crime of murder and sentencing him to suffer the penalty of death.

Appellant Dacillo together with Joselito Pacot y Ibarra were indicted for murder in an information that read:

The undersigned accuses the above-named accused of the crime of Murder, under Art. 248 of the Revised Penal Code, as amended by R.A. 7659, committed as follows:

That on or about February 6, 2000, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating together and helping one another, with treachery and evident premeditation, and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and stabbed one Rosemarie B. Tallada with a bladed weapon, thereby inflicting upon the latter mortal wounds which caused her death.

That the commission of the foregoing offense was attended by the aggravating circumstance of abuse of superior strength.

CONTRARY TO LAW.[2]

The case against appellant's co-accused, Joselito Pacot, was provisionally dismissed for lack of sufficient evidence to identify him with certainty.

Appellant was arraigned on February 21, 2001 and, assisted by counsel, pleaded not guilty. Pre-trial was conducted on March 1, 2001 and trial ensued thereafter.

To establish appellant's guilt, the prosecution presented the following witnesses: Charlita Tallada, the victim's mother; Patricia Turlao, the victim's aunt; appellant Dacillo's neighbors, Jovelyn Dagmil, Augusto Cesar Arara, Roche Abregon, Resna Abregon, Allan Castanares, Jupiter Campaner; police officers SPO2 Rodolfo Taburda and SPO1 Avelino Alcobus, and medico-legal officer Dr. Danilo P. Ledesma.

The facts, as established by the prosecution witnesses' collective testimonies, follow.

The victim, seventeen-year-old Rosemarie B. Tallada, was last seen alive at dusk on February 6, 2000, on the bridge near appellant's house at Purok No. 3, New Society Village, Ilang, Davao City.

Around 7:45 p.m. that evening, witness Jovelyn Dagmil, who was living with her aunt in the house adjacent to appellant's, was looking for her cousin when she saw the victim Rosemarie on the bridge. Because it was drizzling, she invited Rosemarie inside their house but the latter declined and told her she was waiting for someone.[3]

After a while, Jovelyn heard a man inside appellant's house calling "Psst, psst . . ." Thinking the call was meant for her, she turned but instead saw Rosemarie walking towards and entering appellant's house.[4]

Not long after Rosemarie went inside the house, a struggle was heard therein. Witnesses Roche and Resna Abregon, who were in the adjacent house singing with a karaoke machine, suddenly felt the floor shaking as if a scuffle was going on at the other side of the wall. The houses were built on stilts above the seashore, adjoining one another with mere wooden partitions in between. Roche Abregon peeped through a hole on the wall and saw appellant and another man grappling with a woman who was gagged with a handkerchief.[5] When Roche saw appellant choking the woman, she informed her aunt about the commotion in appellant's house but the aunt brushed it aside as a simple family quarrel.[6] For a while they heard the sound of a woman being beaten up. Then everything became quiet. Later that evening, they saw appellant leaving his house.[7]

The following day, February 7, 2000, at around 8:00 a.m., appellant was seen entering his house carrying lumber and screen.[8] He was observed going in and out of his house several times, each time carefully locking the gate as he left.[9] At around 9:00 a.m., appellant was seen with ready-mixed cement in a plastic pail and, when asked what he was going to do with the cement, replied that it was for the sink he was constructing.[10]

Later, appellant entrusted a bag of woman's personal belongings to barangay tanod Allan Castañares and told the latter that it belonged to his woman companion. He allegedly could not bring it home because his wife might see them.[11]

By February 11, 2000, neighbors started smelling the rotten odor of Rosemarie's already decomposing body.[12]

At 5:00 p.m. the same day, witnesses Roche, Resna, and Rachel were gathering seashells under appellant's house when they saw droplets of blood and pus dripping from appellant's comfort room. They immediately reported it to their aunt who in turn instructed her husband to get a stick and poke the sacks covering the comfort room. However, the husband instead climbed up the house and was greeted by the stink emanating from the corner where he saw a tomb-like structure. They immediately reported the matter to barangay officials who called the police.[13]

At about 10:00 p.m., policemen arrived at appellant's house, accompanied by his wife, and forcibly opened the lock. They proceeded to where the tomb was located.

When cracked open, the tomb revealed the decomposing body of a woman.[14]

The corpse was brought to the Rivera Funeral Parlor where it was identified by the victim's mother Charlita Tallada and aunt Patricia Turlao as that of Rosemarie, through the keloid scar on her forearm.

Dr. Danilo Ledesma conducted an autopsy on Rosemarie's remains. His necropsy report revealed that Rosemarie died from a stab wound in the abdomen. The report further disclosed that she suffered contusions in the anterior chest wall and her right hand; an incised wound on her left middle finger; a stab wound on the left side of the face and fractures on the 2nd, 3rd, 4th, 5th, 6th and 7th ribs on her side.[15]

Dr. Ledesma testified that the wounds suffered by Rosemarie indicated that she put up a struggle and the wounds were inflicted before her death.[16]

In his defense, appellant admitted complicity in the crime but minimized his participation. Appellant alleged that

he only held down Rosemarie's legs to prevent her from struggling and, after the latter was killed by another man he identified as Joselito Pacot, he encased the corpse in cement.

He claimed that Pacot, a co-worker at Davao Union Cement Corporation (DUCC), was looking for a house where he and his girlfriend Rosemarie could spend the night. He offered his brother's house which was under his care. In the evening of February 6, 2000, he and Joselito Pacot brought Rosemarie to the house at Purok No. 3, New Society Village, Ilang, Davao City.

After accompanying the couple there, he went home to take supper. Later that evening, he returned to the house with the bottle of Sprite Pacot had ordered. When he arrived, Pacot and Rosemarie were already grappling with each other and Pacot was strangling the girl. He told Pacot to stop but instead of heeding him, the latter ordered him to close the door. Pacot told appellant that he was going to be implicated just the same so he closed the door as ordered and helped Pacot "(hold) the feet of the woman" as "her feet kept hitting the walls." [17]

The two men stopped only when Rosemarie was already motionless. Pacot wanted to dump the body into the sea but appellant told him it was low tide. Appellant then suggested that they entomb the body in cement for which Pacot gave appellant P500.

Pacot left the house at dawn the following day, February 7, 2000. At past 10:00 a.m., appellant brought the concrete mixture and cast the dead body in cement. After finishing the job in the afternoon of that day, appellant reported for work at DUCC.

When the body was discovered in the evening of February 11, 2000, appellant immediately left for Cebu City, arriving there the next day, February 12, 2000. He stayed in Cebu City until his arrest the following year.

On May 31, 2001, the trial court rendered judgment finding appellant guilty of murder and imposed upon him the supreme penalty of death:

WHEREFORE, this Court finds the accused Francisco Dacillo GUILTY beyond reasonable doubt of the crime of MURDER for the death of Rosemarie Tallada, as defined and penalized under Art. 248 of the Revised Penal Code, as amended. Considering the aggravating circumstance of recidivism with no mitigating circumstance to offset the same, he is hereby sentenced to the extreme penalty of DEATH,

He is further ordered to indemnify the heirs of the offended party in the amount of P50,000.00, plus the sum of P50,000.00 as moral damages, and the sum of P50,000.00 as exemplary damages.

His immediate confinement to the national penitentiary is hereby ordered.

Costs de officio.

SO ORDERED.[18]

Thus, this automatic review.

In his brief, appellant raises the following errors allegedly committed by the trial court:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II

THE COURT A QUO GRAVELY ERRED IN AWARDING THE HEIRS OF THE OFFENDED PARTY THE AMOUNT OF PHP50,000.00, WHICH APPEARS AS PAYMENT FOR ACTUAL DAMAGES.[19]

Appellant admitted that he had a hand in the killing of Rosemarie but attempted to downgrade his participation in the crime by claiming he only held Rosemarie's legs as Pacot was strangulating her. The rule is that any admission made by a party in the course of the proceedings in the same case does not require proof to hold him liable therefor. Such admission may be contradicted only by showing that it was made through palpable mistake or no such admission was in fact made. There was never any such disclaimer by appellant.

Moreover, despite appellant's self-serving, exculpatory statement limiting his involvement in the crime, all circumstances pointed to his guilt. His declaration faltered in the face of the testimonies of eyewitnesses positively identifying him as one of the two men who were with Rosemarie when she was killed. Witness Roche Abregon pointed to appellant as the one who strangled Rosemarie. He was established to be inside the house at the time the witnesses heard a woman being battered. Thus, assuming for the sake of argument that Pacot was the mastermind, appellant's admission that he participated in its commission by holding Rosemarie's legs made him a principal by direct participation.

Two or more persons taking part in the commission of a crime are considered principals by direct participation if the following requisites are present:

- they participated in the criminal resolution and
- they carried out their plan and personally took part in its execution by acts which directly tended to the same end.[20]

Both requisites were met in this case. Two or more persons are said to have participated in the criminal resolution when they were in conspiracy at the time of the commission of the crime. To establish conspiracy, it is not essential that there be proof of the previous agreement and decision to commit the crime, it being sufficient that the malefactors acted in concert pursuant to the same objective.[21]

The prosecution was able to prove appellant's participation in the criminal resolve by his own admission that, right after he was told by Pacot to close the door, he held down Rosemarie's legs. He was pinpointed as the one who throttled the victim. He admitted that they only stopped when they were sure that Rosemarie was already dead. The two men planned how to dispose of the victim's body; it was in fact appellant's idea to pour concrete on the body, prevailing over Pacot's suggestion to just dump the body into the sea. It was appellant himself who encased the body in cement and made sure that there were no leaks from which foul odor could emanate. He was a conspirator in the killing and, whether or not he himself did the strangling or the stabbing, he was also liable for the acts of the other accused.

It is well-settled that a person may be convicted for the criminal act of another where, between them, there is conspiracy or unity of purpose and intention in the commission of the crime charged.[22] Conspiracy need not be proved by direct evidence of prior agreement on the commission of the crime as the same can be inferred from the conduct of the accused before, during, and after the commission of the crime showing that they acted in unison with each other pursuant to a common purpose or design.[23]

We are convinced beyond doubt of the joint and concerted effort between appellant and the man he identified as Pacot in the killing of Rosemarie.

Appellant likewise contends that the trial court erred in ruling that the presence of the aggravating circumstance of abuse of superior strength qualified the killing to murder. He contends that the qualifying circumstance of abuse of superior strength was not specifically alleged in the information. Nothing can be farther from the truth. A cursory reading of the information reveals that appellant was sufficiently informed of the charges against him, including the use of superior strength in killing the hapless and defenseless female victim.

The aggravating circumstance of abuse of superior strength necessitates a showing of the relative disparity in the physical characteristics of the aggressor and the victim such as age, gender, physical size and strength. We agree with the trial court that the killing of Rosemarie was committed with abuse of superior strength. As found by the court a quo, two grown-up men against a young fragile woman whose ability to defend herself had been effectively restrained revealed a shocking inequality of physical strength. The victim was much weaker in constitution and could not have possibly defended herself from her stronger assailants.[24] Such disparity was manifest in the contusions in the chest and hands, wounds on the fingers, a stab wound on the left side of the face and multiple fractures in the ribs of the victim.[25] The abuse of superior strength was obvious in the way Rosemarie was mercilessly beaten to a pulp.

The killing of Rosemarie was thus correctly qualified to murder by the abuse of superior strength, a circumstance specifically pleaded in the information and proved beyond reasonable doubt.

The Court, however, finds that the trial court erred in imposing the death penalty on the ground that appellant admitted during re-cross examination that he had a prior conviction for the death of his former live-in partner. The fact that appellant was a recidivist was appreciated by the trial court as a generic aggravating circumstance which increased the impossible penalty from reclusion perpetua to death.

In order to appreciate recidivism as an aggravating circumstance, it is necessary to allege it in the information and to attach certified true copies of the sentences previously meted out to the accused.[26] This is in accord with Rule 110, Section 8 of the Revised Rules of Criminal Procedure which states:

SEC. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (Emphasis supplied)

The aggravating circumstance of recidivism was not alleged in the information and therefore cannot be appreciated against appellant. Hence the impossible penalty should be reduced to reclusion perpetua.

Regarding the award of P50,000 as civil indemnity to the heirs of the victim, appellant claims that said amount was awarded by the trial court as payment for actual damages. This claim is misleading. As aptly pointed out by the Solicitor General, the amount was granted by the trial court by way of indemnity ex delicto to compensate for the death of the victim which prevailing jurisprudence fixes at P50,000.[27] The award of such indemnity requires no proof other than the death of the victim and the accused's responsibility therefor.[28]

The award of P50,000 as moral damages is proper, supported as it was by the testimony of Charlita Tallada, the victim's mother, that Rosemarie's death caused her immeasurable pain.[29]

In addition, the Court awards P25,000 in temperate damages, said amount being awarded in homicide or murder cases when no evidence of burial and funeral expenses is presented in the trial court.[30]

With regard to the award of exemplary damages, the Civil Code of the Philippines provides:

ART. 2229. Exemplary or corrective damages are imposed, by way of example of correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

In *People vs. Catubig*,[31] we explained that:

The term “aggravating circumstances” used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.

Thus, the award of exemplary damages is warranted under Art. 2230 of the Civil Code in view of the presence of the aggravating circumstance of abuse of superior strength. Imposition of exemplary damages is also justified under Art. 2229 of the Civil Code in order to set an example for the public good.[32] For this purpose, we believe that the amount of P25,000 may be appropriately awarded.

WHEREFORE, the assailed judgment in Criminal Case No. 45,283-2000 of the Regional Trial Court of Davao City, Branch 31, is hereby **AFFIRMED** with **MODIFICATION**. Appellant Francisco Dacillo y Timtim alias Dodoy is declared guilty beyond reasonable doubt of murder as defined and penalized under Article 248 of the Revised Penal Code. There being neither aggravating nor mitigating circumstances, appellant is hereby sentenced to reclusion perpetua and is further ordered to indemnify the heirs of Rosemarie Tallada the sum of P50,000 as civil indemnity, P50,000 as moral damages, P25,000 as temperate damages and P25,000 as exemplary damages.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Penned by Judge Wenceslao E. Ibabao.

[2] Rollo, p. 30.

[3] TSN, March 12, 2001 pp. 32-34.

[4] Ibid., p. 36.

[5] TSN, March 15, 2001, pp. 98-99.

[6] Ibid., p. 101.

[7] TSN, April 2, 2001, pp. 134-137.

[8] TSN, March 12, 2001, p. 40.

[9] Ibid., pp. 40-43.

[10] TSN, April 2, 2001, pp. 215-217.

- [11] TSN, April 25, 2001, p. 244.
- [12] Ibid., pp. 17-18.
- [13] TSN, April 2, 2001, pp. 138-141.
- [14] Exhibits “B,” “C” and “D,” TSN, April 2, 2001, pp. 168-171.
- [15] Exhibit “J,” Folder of exhibits, p.10.
- [16] TSN, April 2, 2001, pp. 194-197, 203.
- [17] TSN, May 2, 2001, pp. 280-283.
- [18] Rollo, pp. 161-162.
- [19] Rollo, pp. 15, 19.
- [20] Reyes, The Revised Penal Code Annotated, 15th ed. 2001, citing *People vs. Ong Chiat Lay*, 60 Phil. 788, 790 [1934]; *People vs. Tamayo*, 44 Phil. 38, 45-46 [1922].
- [21] *People vs. San Luis*, 86 Phil. 485, 497 [1950]; *People vs. Carpio*, 191 SCRA 108, 118 [1990]; *People vs. Cruz, Jr.*, 191 SCRA 127, 135 [1990]; *People vs. Sazon*, 189 SCRA 700, 713 [1990].
- [22] *People vs. Talla*, 181 SCRA 133, 148 [1990].
- [23] *People vs. Pablo*, 349 SCRA 79 [2001].
- [24] *People vs. Asis*, 286 SCRA 64 [1998].
- [25] Exhibit “J,” Folder of exhibits, p.10.
- [26] *People vs. Martinada*, 194 SCRA 36, 45 [1991].
- [27] *People vs. Callet*, 382 SCRA 43 [2002].
- [28] *People vs. Cayago*, 312 SCRA 623 [1999].
- [29] TSN, March 5, 2001, p. 12.
- [30] *People vs. Abrazaldo*, 397 SCRA 137 [2003].

[31] 363 SCRA 621, 625 [2001].

- [32] *People vs. Padlan*, 290 SCRA 388, 406 [1998]; See also *People vs. Nicolas*, 400 SCRA 217, 228 [2003] citing *People vs. Catubig*, 363 SCRA 621, 635 [2001].

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